IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17816 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DELIPKUMAR KASHULAL SAVALIYA (MARVADI)

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 17816 of 2003

MR SATISH R PATEL for Petitioner No. 1

MR KR JANI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS MITA S PANCHAL AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 05/11/03 passed by respondent no.1 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before South Division Police Station at C.R.No.1619 / 2003 on 01/11/03. It was also alleged against him that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order.

3. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that there was a threat to public order. It has also been contended that the names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it is required to be quashed and set aside.

4. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

5. At the stage of final hearing, it has been brought to the notice of this Court by the learned advocates for the parties that the present petitioner was a co-accused in the aforesaid registered offence and two witnesses had given common statements against the petitioner as well as against the petitioner in S.C.A.No.17815 / 2003 which has been disposed of today.

6. Now, on going through the facts of that case and comparing them with the facts of the case on hand, it is

clear that the petitioner and the petitioner in the said petition, were co-accused and the statements of witnesses were also common.

7. So, when the detention order of the petitioner in S.C.A.No.17815/2003 was quashed and set aside, then, on the principle of parity, this petition is also required to be allowed and the detention order is required to be quashed and set aside.

8. For the foregoing reasons and for the reasons stated in S.C.A.No.17815/2003, this petition is allowed. The impugned order of detention dated 05/11/03 passed by respondent no.1 against the petitioner, is ordered to be quashed and set aside. Detenu, Dilipkmar Keshulal Savaliya (Marvadi), is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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